

**STATE OF KANSAS**  
**Department of Health and Environment**

**Notice of Hearing on Proposed Administrative Regulations**

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Waste Management (BWM), will conduct a public hearing at 1:30 p.m. Tuesday, April 2, 2013, in the Azure Conference Room, fourth floor, Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed new hazardous waste management regulation K.A.R. 28-31-260b and the adoption of amended hazardous waste management regulation K.A.R. 28-31-268. A summary of the proposed regulations, environmental benefit and estimated economic impact follows.

**Summary of Regulations:**

**K.A.R. 28-31-260b. General provisions and definitions; adoption of technical documents.** This regulation adopts technical documents that are cited in the Federal hazardous waste regulations which the state has adopted by reference. Adoption of these technical documents is needed to maintain and update Kansas' authorization to administer the hazardous waste management program in lieu of EPA.

**K.A.R. 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.** The proposed amendment corrects an error in K.A.R. 28-31-268, which adopts 40 CFR Part 268, Land Disposal Restrictions, by reference. 40 CFR Part 268 sets standards for treatment of hazardous waste that is destined for disposal in a municipal solid waste landfill or a hazardous waste landfill.

Under Federal regulations, Land Disposal Restrictions (LDRs) apply to generators of more than 100 kg of hazardous waste each month, i.e. Small Quantity Generators and Large Quantity

Generators. Kansas' most recent adoption of this regulation changed the generation limit to 25 kg per month, thus requiring that Kansas Small Quantity Generators (KSQGs) also comply with all of the LDR regulations. The intent was that KSQGs only needed to comply with two sections of the LDRs.

It is important that this error be corrected before Kansas' authorization to administer the hazardous waste program is updated. If EPA authorizes the regulation without the correction, EPA could require KSQGs to comply with all of the LDR requirements in 40 CFR 268.

**Environmental Benefit:** The adoption by reference of technical documents in K.A.R. 28-31-260b and the corrections to K.A.R. 28-31-268 do not provide any environmental benefit.

**Economic Impact:** The adoption by reference of technical documents in K.A.R. 28-31-260b imposes no additional costs on the regulated community. The amendment to K.A.R. 28-31-268 reduces the potential regulatory burden and cost of compliance with this regulation for over 600 KSQG facilities in Kansas. There will be no increase in costs to governmental agencies or the general public.

The time period between the publication of this notice and April 2 serves as the required public comment period of at least 60 days for the purpose of receiving written public comments on the proposed regulatory action. All interested parties may submit written comments prior to 5 p.m. April 2 to Christine Mennicke, Kansas Department of Health and Environment, Bureau of Waste Management, 1000 SW Jackson, Suite 320, Topeka, 66612, by fax to (785) 296-8909, or by e-mail to [cmennicke@kdheks.gov](mailto:cmennicke@kdheks.gov).

During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written

comments. In order to give all parties an opportunity to present their views, it may be necessary to require each participant to limit any oral presentation to an appropriate timeframe.

Copies of the proposed regulations and the corresponding regulatory impact statement may be obtained on the BWM website at [www.kdheks.gov/waste/](http://www.kdheks.gov/waste/) or by contacting Christine Mennicke at (785) 296-0724 or [cmennicke@kdheks.gov](mailto:cmennicke@kdheks.gov). Questions pertaining to the proposed regulations should be directed to Christine Mennicke.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the corresponding regulatory impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Christine Mennicke.

Robert Moser, MD

Secretary of Health and Environment

28-31-260b. General provisions and definitions; adoption of technical documents. Each reference in K.A.R. 28-31-260 through 28-31-279 to any of the following documents shall mean that document as hereby adopted by reference:

(a) ASTM. The following documents published by the American society for testing and materials:

(1) ANSI/ASTM D 93-79, "standard test methods for flash point by Pensky-Martens closed tester," published October 1979;

(2) D 93-80, "standard test methods for flash point by Pensky-Martens closed tester," published October 1980 and updated July 1981;

(3) D 1946-82, "standard method for analysis of reformed gas by gas chromatography," published August 1982;

(4) D 2267-88, "standard test method for aromatics in light naphthas and aviation gasolines by gas chromatography," published December 1988;

(5) D 2382-83, "standard test method for heat of combustion of hydrocarbon fuels by bomb calorimeter (high-precision method)," published January 1984;

(6) D 2879-92, "standard test method for vapor pressure-temperature relationship and initial decomposition temperature of liquids by isoteniscope," published December 1992;

(7) ASTM D 3278-78, "standard test methods for flash point of liquids by setaflash closed tester," published March 1979;

(8) E 168-88, "standard practices for general techniques of infrared quantitative analysis," published July 1988;

(9) E 169-87, “standard practices for general techniques of ultraviolet-visible quantitative analysis,” published April 1987;

(10) E 260-85, “standard practice for packed column gas chromatography,” published November 1985; and

(11) in E 926-88, “standard test methods of preparing refuse-derived fuel (RDF) samples for analyses of metals,” published May 1988, “test method C – bomb, acid digestion method” on pages 3 and 4;

(b) EPA. The following documents published by the United States environmental protection agency (EPA):

(1) EPA 450/2-81-005, APTI course 415, "control of gaseous emissions: student manual," published December 1981, except pages ii and I-4;

(2) EPA 454/R-92-019, previously designated as EPA 450/R-92-019, “screening procedures for estimating the air quality impact of stationary sources, revised,” published October 1992, except the preface on page iii, the acknowledgments on page iv, and the references in section 5; and

(3) the following methods published in the following updates to EPA publication SW-846, “test methods for evaluating solid waste,” third edition, published November 1986:

(A) In “update III,” dated December 1996, the following:

(i) Method 0011, “sampling for selected aldehyde and ketone emissions from stationary sources,” dated December 1996;

(ii) method 0023A, “sampling method for polychlorinated dibenzo-*p*-dioxins and polychlorinated dibenzofuran emissions from stationary sources,” dated December 1996;

(iii) method 0050, “isokinetic HCl/Cl<sub>2</sub> emission sampling train,” dated December 1996;

(iv) method 0051, “midget impinger HCl/Cl<sub>2</sub> emission sampling train,” dated December 1996;

(v) method 0060, “determination of metals in stack emissions,” dated December 1996; and

(vi) method 0061, “determination of hexavalent chromium emissions from stationary sources,” dated December 1996; and

(B) in “final update for IIIB to the SW-846: test methods for evaluating solid waste physical/chemical methods,” published February 2007, the following:

(i) Method 1110A, “corrosivity toward steel,” dated November 2004;

(ii) method 1310B, “extraction procedure (EP) toxicity test method and structural integrity test,” dated November 2004;

(iii) method 1311, “toxicity characteristic leaching procedure,” dated July 1992;

(iv) method 9010C, “total and amenable cyanide: distillation,” dated November 2004;

(v) method 9012B, “total and amenable cyanide (automated colorimetric, with off-line distillation),” dated November 2004;

(vi) method 9040C, “pH electronic measurement,” dated November 2004;

(vii) method 9060A, “total organic carbon,” dated November 2004; and

(viii) method 9095B, “paint filter liquids test,” dated November 2004;

(c) NFPA. Tables 2-1 through 2-6 in chapter 2 in the following documents published by the national fire protection association (NFPA):

(1) NFPA 30, “flammable and combustible liquids code 1977,” 1977 edition; and

(2) NFPA 30, “flammable and combustible liquids code 1981,” 1981 edition; and

(d) API. In API publication 2517, “evaporative loss from external floating-roof tanks,” third edition, published February 1989 by the American petroleum institute, pages vii through ix and pages 1 through 61. (Authorized by and implementing K.S.A. 65-3431; effective P-\_\_\_\_\_.)

28-31-268. Land disposal restrictions; adoption and modification of federal regulations. (a)

Adoption. The provisions of 40 CFR part 268, including appendices III, IV, VI through ~~IX~~ VIII, and XI, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
- (2) the exclusions from adoption listed in subsection (b); and
- (3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 268 shall be excluded from adoption:

- (1) All comments and all notes, ~~except in subpart D and appendix IX~~;
- (2) 40 CFR 268.13; and
- (3) 40 CFR 268.44(o).

(c) Modifications. The following modifications shall be made to 40 CFR part 268:

(1) Each occurrence of the following phrases shall be deleted:

- (A) “(incorporated by reference, see § 260.11 of this chapter)”;
- (B) “as incorporated by reference in § 260.11”;
- (C) “as incorporated by reference in § 260.11 of this chapter”;
- (D) “as incorporated by reference in 40 CFR 260.11”; and
- (E) “as referenced in § 260.11 of this chapter.”

(2) ~~In Paragraph 40 CFR 268.1(e)(1), the term “small quantity” shall be deleted and the phrase “100 kilograms” shall be replaced with “25 kilograms~~ Waste generated by conditionally exempt small quantity generators or Kansas small quantity generators (KSQGs), except KSQGs shall comply with 40 CFR 268.7(a)(5) and (10).”



(3) In 40 CFR 268.3(a), the phrase “RCRA section 3004” shall be replaced with “40 CFR part 268.”

(4) In 40 CFR 268.7(a)(9)(iii), the phrase “except for D009” shall be added to the end of the sentence.

(5) In 40 CFR 268.7(a)(10), the phrase “and Kansas small quantity generators” shall be inserted after the term “Small quantity generators.”

(6) In 40 CFR 268.7(d), the phrase “§ 261.3(e)” shall be replaced with “§ 261.3(f).”

(7) 40 CFR 268.7(d)(1) shall be replaced with the following: “A one-time notification, including the following information, shall be submitted to the department.”.

(8) In 40 CFR 268.14(b) and (c), the phrase “section 3001” shall be replaced with “40 CFR part 261.”

(9) In 40 CFR 268.44(i), the phrase “in § 260.20(b)(1)-(4)” shall be replaced with “required by EPA’s rulemaking petition program.”

(10) In 40 CFR 268.50(a), the phrase “of RCRA section 3004” shall be deleted.

(11) In 40 CFR 268.50(e), the phrase “or RCRA section 3004” shall be deleted.

(Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011; amended

P-\_\_\_\_\_.)

Kansas Department of Health and Environment  
**Regulatory Impact Statement**  
pursuant to K.S.A. 77-416

**Proposed New Regulation**  
K.A.R. 28-31-260b

**Proposed Amended Regulation**  
K.A.R. 28-31-268

January 2013

### **Executive Summary of Proposed Amended Regulations**

In October of 1985, the Kansas Department of Health and Environment (KDHE) obtained authorization from the U.S. Environmental Protection Agency (EPA) to administer the hazardous waste management program in lieu of EPA. Currently, KDHE is only authorized for the Federal program in effect as of July 1, 1992. In 2011, KDHE updated its regulations to adopt Federal hazardous waste regulations as in effect July 1, 2006.

KDHE is seeking authorization for the updated program which will, for the first time, include authorization for corrective action. When KDHE receives this authorization, hazardous waste facilities in Kansas that are undertaking corrective action measures will be under the regulatory oversight of KDHE rather than EPA. However in order for the current hazardous waste program to be authorized, Kansas must adopt by reference certain technical documents that are mentioned in the regulations. KDHE proposes to adopt these documents by reference in new regulation KAR 28-31-260b.

In addition, KDHE has discovered a mistake in KAR 28-31-268 (Land Disposal Restrictions) which potentially imposes analytical testing and paperwork requirements that KDHE did not intend on generators of 25 to 100 kilograms of hazardous waste per month. KDHE proposes to fix this error by amending KAR 28-31-268. Other non-substantive changes will also be made to this regulation.

### **Environmental Benefit Statement**

#### **1) Need for proposed amendments and environmental benefit likely to accrue.**

##### **a. Need.**

##### **KAR 28-31-260b. General provisions and definitions; adoption of technical documents.**

Adoption of these technical documents is needed to maintain and update Kansas' authorization to administer the hazardous waste management program in lieu of EPA. These documents are adopted by reference in the federal regulations at 40 CFR 260.11, which Kansas has not adopted. Some of the technical documents listed in 40 CFR 260.11 are not adopted by reference in KAR 28-260b, either because the federal regulations the documents are referenced in were not adopted by Kansas or because they are referenced in provisions that are not delegable to State programs.

##### **KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.**

This proposed amendment serves to correct an error in KAR 28-31-268, which adopts 40 CFR Part 268, Land Disposal Restrictions, by reference. 40 CFR Part 268 sets standards for treatment of hazardous waste that is destined for disposal in a municipal solid waste landfill or a hazardous waste landfill.

Under Federal regulations, Land Disposal Restrictions (LDRs) apply to generators of more than 100 kg of hazardous waste each month, i.e. Small Quantity Generators and Large Quantity Generators. Kansas' most recent adoption of this regulation changed the generation limit to 25 kg per month, thus requiring that Kansas Small Quantity Generators (KSQGs) also comply with all of the LDR regulations. The intent was that KSQGs only needed to comply with two sections of the LDRs:

- 40 CFR 268.7(a)(5). This provision requires generators that choose to treat certain wastes on-site to “develop and follow a waste analysis plan which describes the procedures they will carry out to comply with the treatment standards” KDHE is not aware of any KSQGs who do this type of on-site treatment; and
- 40 CFR 268.7(a)(10). This provision contains certification and notification requirements for generators operating under tolling agreements. The use of tolling agreements has dropped over the years so there are currently few or no facilities using this arrangement.

It is important that this error be corrected before Kansas’ authorization to administer the hazardous waste program is updated. If EPA authorizes the regulation without the correction, EPA could require KSQGs to comply with all of the LDR requirements in 40 CFR 268.

As proposed, the amendment at KAR 28-31-268(c)(2) will modify the adoption of 40 CFR 268.1(e)(1) to read as follows:

*(e) The following hazardous wastes are not subject to any provision of part 268:*  
*(1) Waste generated by conditionally exempt small quantity generators or Kansas small quantity generators (KSQGs), except KSQGs shall comply with 40 CFR 268.7(a)(5) and (10).*

In addition, KAR 28-31-268(a) will be modified to no longer include appendix IX of 40 CFR 268 in the adoption by reference since this appendix only contains a note. KAR 28-31-268(b)(1) will be modified to exclude all comments and notes from adoption.

#### **b. Environmental benefit.**

The adoption by reference of technical documents in KAR 28-31-260b and the corrections to KAR 28-31-268 do not provide any environmental benefit.

**2) When applicable, a summary of the research or data indicating the level of risk to the public health or the environment being removed or controlled by the proposed regulations or amendments.**

Not applicable.

**3) If specific contaminants are to be controlled by the proposed regulation or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.**

Not applicable.

### **Economic Impact Statement**

#### **1) Are the proposed regulations or amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?**

KAR 28-31-260b. General provisions and definitions; adoption of technical documents.

Yes, adoption of these technical documents is needed to maintain and update Kansas' authorization to administer the hazardous waste management program in lieu of EPA.

KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

No, these amendments are being made to fix an error in the regulation and to exclude all comments and notes from adoption.

#### **2) Do the proposed regulations or amendments exceed the requirements of applicable federal law?**

KAR 28-31-260b. General provisions and definitions; adoption of technical documents.

No.

KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

The proposed amendment is less stringent than the existing Kansas regulation, but remains more stringent than federal requirements.

#### **3) Description of costs to agencies, to the general public and to persons who are affected by, or are subject to, the regulations:**

##### **a. Capital and annual costs of compliance with the proposed regulations or amendments and the persons who will bear those costs.**

KAR 28-31-260b. General provisions and definitions; adoption of technical documents.

Adoption by reference of the technical documents imposes no additional costs on the regulated community.

KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

There are currently 633 KSQG facilities in Kansas that this amendment applies to. The proposed amendment reduces the potential regulatory burden and cost of compliance with this regulation. In practice, KDHE has not been making KSQGs comply with the full set of requirements in 40 CFR 268. The amendments concerning comments and notes will impose no costs.

##### **b. Initial and annual costs of implementing and enforcing the proposed regulations or amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.**

There will be no initial or annual costs to implement or enforce these regulations.

**c. Costs which would likely accrue if the proposed regulations or amendments are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.**

KAR 28-31-260b. General provisions and definitions; adoption of technical documents.

If this proposed regulation is not adopted, Kansas cannot be authorized to administer the hazardous waste management program in lieu of EPA.

KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

If we do not make the correction to this regulation, the 633 Kansas Small Quantity Generators would technically have to comply with all of the LDR regulations, increasing their operating costs. In addition, if EPA authorizes the regulation without the correction EPA could require KSQGs to comply with all of the LDR requirements in 40 CFR 268.

In practice, KDHE has not been making KSQGs comply with the analytical testing and paperwork requirements in KAR 28-31-268. Potential costs that would be incurred if the amendment is not adopted are too facility-specific to estimate.

**d. A detailed statement of the data and methodology used in estimating the costs used in the statement.** Not applicable.

**e. Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.** There were no less intrusive or less costly methods available for consideration by KDHE to achieve the purposes of the proposed amendment.

**f. Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.** Municipalities, counties, and school boards will not incur any costs as a result of the regulatory changes. However a copy of this Regulatory Impact Statement and the regulations will be sent electronically to each of these organizations at the start of the public comment period.

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